

(1999) 07 AHC CK 0181

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 2124 of 1995 and C.M.P. No. 562 of 1996

Moti Lal and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-07-1999

Acts Referred:

Citation : (2000) CriLJ 163

Hon'ble Judges : Ram Kishore Singh, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : D. Chandra and V.P. Srivastava, for the Appellant; R.K. Tripathi and Shivaji Mishra, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Binod Kumar Roy, J.—Since these writ petitions are inter partes, which have been heard together, and common question of law and facts are involved in them, they are being disposed of by this common Judgment and Order.

2. In Criminal Miscellaneous Writ Petition No.. 2124 of 1995 the prayer of the four petitioners (Petitioner No. 1 is father of petitioners Nos. 2 to 4) is to quash the order of the State Government as contained .in An-nexure IV.

2.1 Annexure IV is really copy of the communication made by the Joint Secretary (Department of Home) to the Additional Director General of Police (Crime Branch), dated Lucknow 2nd May, 1995, stating with reference to his letter dated 1st April, 1995 that he has been asked to inform that the Government after reconsideration has decided to get investigation done by the local police concerning the connected prosecution and thus he is requested to stop Investigation by the C.B., CID immediately and to hand over the entire record to the local police.

3. In Criminal Miscellaneous Writ Petition No. 562 of 1996 the other two sons of petitioner No. 1 Moti Lal Gupta of Criminal Miscellaneous Writ Petition No. 2124

of 1995 have come up with following prayers :--

- (i) to command the C.B., CID to carry out the investigation pursuant to the First Information Report as contained in Annexures IV and XV;
- (ii) to command the police station Kotwali, town and District Allahabad, not to carry out any investigation on the basis of the said first information report; and
- (iii) to command the C.B., CID to file a charge sheet against respondent No. 4 to this writ petition, who is respondent No. 5 to the earlier writ petition.

4. The main thrust of the submission of Mr. V.P. Srivastava, learned counsel appearing in support of the Writ Petition No. 2124 of 1995, and Mr. Yogesh Agrawal, learned counsel appearing in support of Criminal Misc. Writ Petition No. 562 of 1996 was that the main dispute between the petitioners of these two cases and the Informant, is as to who was the owner and/or aggressor and who had really trespassed the premises in question which was in rightful possession of the petitioners and that the investigation officer had failed to consider this glaring aspect of the matter and that the investigation was not done bona fide.

4.1. In fairness to Mr. Srivastava, we note that in order to support his submission, he cited two decisions one of the Supreme Court. In *K. Chandrasekhar Vs. The State of Kerala and Others*, and the other of our own High Court in *Chandravir v. State of U.P.* 1995 (32) ACC 683 : 1995 All LJ 1536 : 1996 Cri LJ 99.

5. Sri Sudhir Mehrotra, learned Additional Government Advocate, appearing on behalf of the U.P. Government and the police authorities, on the other hand, after producing the record before us on the last day as well as today (which was also allowed to be seen by Sri Srivastava in the interest of justice) contended that for very good reasons mentioned in the record the Government had recalled the investigation by the C.B.,C.I.D., that after bona fide investigation charge sheets were submitted on which the Chief Judicial Magistrate, Allahabad had already taken cognizance and now the matter is required to be thrashed on merit by one of the other party since both parties have been summoned. There was no mala fide on the part of the Government which is apparent from the record. Really earlier without waiting for the report of the Senior Superintendent of Police, Allahabad the investigation by the C. B., C. I. D. was directed to be conducted but no sooner the Senior Superintendent of Police, Allahabad apprised that after thorough investigation charge sheets have been submitted then the impugned communication was made and thus no interference is required by this Court more so, when the parties will be at liberty to adduce evidence if they so like in support of their respective cases.

5.1. Sri Mehrotra also placed reliance on a Division Bench decision of our own High Court in *Kaushlendra Pal Singh v. State of U.P.* 1998 (37) ACC 728, submitting that on somewhat similar facts and circumstances where a similar grievance was made before this Court it proceeded to dismiss the writ petition.

He also relied upon the decision of *Bhopal v. State of U.P.* 1997 (34) ACC 371 : 1997 All LJ 782 : 1997 Cri LJ 2263, for the proposition that the State Government has powers to rescind its orders, which can be exercised at any stage.

6. Sri Shiva Ji Mishra the learned counsel for the Informant contended that it was he who was the rightful owner and had correctly lodged the Information which after investigation was found to be true and in fact the petitioner had falsely lodged the F.I.R.

7. Having looked the records we find substance in the argument of Mr. Mehrotra and accept them.

8. We do not want to say much because any observation of ours may prejudice the petitioners. We only say that we could not find any order of the Chief Minister on the record in his pen or his any signature approving withdrawing the investigation from the police and handing it over to the CB CID. We could not find even his initial approving such a course. Mr. Srivastava, the learned counsel for the petitioners, failed to show us them even after repeatedly looking into the records. Thus, the direction issued by the Special Secretary, which was also not in a mandatory form, dated 29-3-1995, or of the Additional Director General of Police (Home) cannot be held to have been issued on any written order of the Chief Minister. The very edifice, on which the first writ petition is founded, have shaken it is not possible for us to record a positive finding that there was a valid order issued by the Chief Minister withdrawing the investigation by the police and handing it over for investigation by the C. B. CID.

9. Having perused the judgments relied upon by Sri Srivastava we find that none of them are of any help to the petitioners. The fact of the case decided by the Supreme Court in *K. Chandra Shekhar etc.* (supra) are apparently different. The Supreme Court in that case held that once the investigation is handed over to the C.B.I, under the provisions of Section 6 of the Delhi Special Police Establishment Act which had proceeded to investigate and submit a report thereafter the Government cannot turn around recalling the said investigation. Our Division Bench decision in *Chandravir* (supra) had proceeded to allow the writ petition in part after holding that there was no sufficient reason or justification why the order dated 4-8-1994 withdrawing the investigation from local police and entrusting the same to the CB C.I.D. cancelling its earlier order was passed. Here valid reasons have been given after looking into the report of the Senior Superintendent of Police, Allahabad.

10. Apparently the police after investigation had submitted charge sheets against both party. The plea of mala fide thus falls to ground. Had the police acted mala fide in its investigation or it was scanty it would have submitted final form in favour of the informant of the instant case.

11. Admittedly after applying his mind the Chief Judicial Magistrate had taken cognizance against both sides.

12. The question as to who was the true owner and/or co-owner and/or co-sharer in possession, is required to be decided on evidence to be adduced by one or the other party and cannot be recorded by us. We are sure, if the parties adduce evidence to support their respective cases, the criminal Court is bound to record a finding, one way or the other.

13. For the reasons aforementioned we dismiss these writ petitions, but without making any order as to costs.

14. The office is directed to hand over a copy of this order within two weeks to Sri Mehrotra for its information to the authority concerned and to despatch a copy to the Chief Judicial Magistrate, Allahabad for proceeding further in the matter.